



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-102656-15; REG-107548-11]

RIN 1545-BM61; 1545-BK10

Notional Principal Contracts; Swaps with Nonperiodic Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations that amend the treatment of nonperiodic payments made or received pursuant to certain notional principal contracts. These regulations provide that, subject to certain exceptions, a notional principal contract with a nonperiodic payment, regardless of whether it is significant, must be treated as two separate transactions consisting of one or more loans and an on-market, level payment swap. The regulations provide an exception from the definition of United States property. These regulations affect parties making and receiving payments under notional principal contracts, including United States shareholders of controlled foreign corporations and tax-exempt organizations. The text of the temporary regulations also serves as the text of these proposed regulations. This document withdraws the notice

of proposed rulemaking (REG-107548-11; RIN 1545-BK10) published in the **Federal Register** on May 11, 2012 (77 FR 27669).

DATES: Comments and requests for a public hearing must be received by [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-102656-15), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-102656-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-102656-15).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 446, Alexa T. Dubert or Anna H. Kim at (202) 317-6895; concerning the proposed regulations under section 956, Kristine A. Crabtree at (202) 317-6934; concerning submissions of comments or to request a public hearing, Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Background and Explanation of Provisions**

On May 11, 2012, the Treasury Department and the IRS published temporary regulations under section 956 (TD 9589) in the **Federal Register** (77 FR 27612). On the same date, a notice of proposed rulemaking (REG-107548-11) by cross-reference to the temporary regulations was published in the **Federal Register** (77 FR 27669).

This document withdraws those proposed regulations (REG-107548-11; RIN 1545-BK10) and provides new proposed regulations (REG-102656-15).

Final and temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1). The final and temporary regulations amend the regulations under section 446 of the Internal Revenue Code (Code) relating to the treatment of nonperiodic payments made or received pursuant to certain notional principal contracts for U.S. federal income tax purposes. The final and temporary regulations also amend the regulations under section 956 of the Code regarding an exception from the definition of United States property. The text of the final and temporary regulations also serves as the text of these proposed regulations. The preamble to the final and temporary regulations explains those regulations and these proposed regulations.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

### **Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

#### **Drafting information**

The principal authors of these regulations are Alexa T. Dubert and Anna H. Kim of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

#### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-107548-11 and RIN 1545-BK10) that was published in the **Federal Register** on May 11, 2012 (77 FR 27669) is withdrawn.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.446-3 is amended by:

1. Revising paragraph (g)(4).
2. Revising paragraph (g)(6), Examples 2, 3 and 4.
3. Revising paragraph (j)(2).

The revisions read as follows:

§1.446-3 Notional principal contracts.

\* \* \* \* \*

(g) \* \* \*

(4) [The text of the proposed amendment to §1.446-3(g)(4) is the same as the text of §1.446-3T(g)(4) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(6) \* \* \*

Example 2. [The text of proposed amendment to §1.446-3(g)(6) Example 2 is the same as the text of §1.446-3T(g)(6) Example 2 published elsewhere in this issue of the **Federal Register**].

Example 3. [The text of proposed amendment to §1.446-3(g)(6) Example 3 is the same as the text of §1.446-3T(g)(6) Example 3 published elsewhere in this issue of the **Federal Register**].

Example 4. [The text of proposed amendment to §1.446-3(g)(6) Example 4 is the same as the text of §1.446-3T(g)(6) Example 4 published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(j) \* \* \*

(2) [The text of the proposed amendment to §1.446-3(j)(2) is the same as the text of §1.446-3T(j)(2) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.956-2 is amended by revising paragraphs (b)(1)(xi) and (f) to read as follows:

§1.956-2 Definition of United States property.

\* \* \* \* \*

(b)(1)(xi) [The text of this proposed amendment is the same as the text of §1.956-2T(b)(1)(xi) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(f) [The text of this proposed amendment is the same as the text of §1.956-2T(f) published elsewhere in this issue of the **Federal Register**].

John M. Dalrymple

Deputy Commissioner for Services and Enforcement.

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